STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 22, 2010
v	No. 290921 Wayne Circuit Court
ROBERT JAYSON GETER, Defendant-Appellant.	LC No. 08-016575-FH

Before: METER, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right from his bench-trial conviction of witness interference, MCL 750.122(7)(a). The trial court sentenced him to five months in jail and two years' probation. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The complainant testified that on August 20, 2008, she was sitting in her living room with her window open when she heard a cry for help. She went outside and saw a young woman, identified as defendant's girlfriend Shianta Bailey, emerge from a nearby home. Bailey was carrying a baby and calling for help. The complainant then saw defendant, whom she had not met, emerge from the home and start "beating" Bailey. Defendant also threw Bailey against a house. The complainant ran down the street, took the baby from Bailey's arms, and told her to come with the complainant. The two ran back to the complainant's home and called the police.

The complainant received a subpoena to appear in Harper Woods District Court concerning a domestic-violence case against defendant. Later, on two occasions, defendant approached the complainant at her home. Each time, he had Bailey and the child with him. The complainant stated that on the first occasion, defendant told her that she did not have to say anything in court. When the complainant stated that she could not lie in court, defendant repeated his assertion that complainant did not have to say anything. The complainant testified that as she spoke with defendant, "[h]is whole attitude changed. His abruptness. Kept cutting me off and his eye contact and his verbal to me [sic], his actions, his facial actions, it somewhat scared me." When asked why defendant's actions scared her, she replied that it was due to defendant's expressions and abruptness, and the fact that the conversation started out "nice" and then "went the other way."

Approximately one week later defendant returned and asked the complainant if she had gone to the court to discuss the subpoena. The complainant replied that she had not, and defendant then asked if she had spoken with defendant's attorney. When the complainant replied that she had not, and that she did not have the time, defendant called his attorney's number with his cellular telephone and handed the telephone to the complainant as it rang. Defendant's attorney spoke with the complainant. During the conversation, defendant looked back at Bailey, "saying-yelling out to her, [']I told you she wouldn't say it, I told you she wouldn't talk[']] or something like that." The complainant testified, "[a]nd I just thought- the personality changed drastic again in the face and the eyes and I'm going, okay. So I just closed the phone and I handed it back to him and I went right back in my house." When further asked to describe defendant's demeanor the two times he was at her home, the complainant stated, "Well, at first two times [sic] he seemed all right and then toward the end of our conversation when I wouldn't do exactly what he wanted me to do or say in the courts his attitude changed toward me and it made me scared." The complainant admitted that defendant did not make explicit threats toward her or her property.

Defendant argues that this evidence was insufficient to support his conviction. In actions tried without a jury, we review a trial court's factual findings for clear error and its conclusions of law de novo. MCR 2.613(C); *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). We view the evidence in the light most favorable to the prosecution, drawing all reasonable inferences in support of the verdict, and will affirm a bench-trial conviction where the evidence supports a rational trier of fact in finding that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

Defendant was charged with witness tampering under the specific theory that he threatened or intimidated the complainant. MCL 750.122(3), which governs this portion of the witness tampering statute, provides:

> (3) A person shall not do any of the following *by threat or intimidation*:
>
> (a) Discourage or attempt to discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.
>
> (b) Influence or attempt to influence testimony at a present or future official proceeding.
>
> (c) Encourage or attempt to encourage any individual to avoid legal process, to withhold testimony, or to testify falsely in a present or future official proceeding. [Emphasis added.][1]

[1] Defendant arguably could have been charged with witness tampering under MCL 750.122(6), which provides the more general prohibition that "[a] person shall not willfully impede, interfere
(continued…)

Taking all the evidence in the light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to support defendant's conviction. Defendant essentially argues that nothing he did or said to complainant evidenced an intent to prevent or discourage her from testifying by threat or intimidation. He argues that, perhaps due to some preconceived fear of black men, the complainant was afraid of him, even though he did not try to intimidate her.

However, satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Questions of credibility and intent are for the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Queenan*, 158 Mich App 38, 55; 404 NW2d 693 (1987), abrogation on other grounds recognized in *People v Russo*, 439 Mich 584; 487 NW2d 698 (1992). In addition, "[b]ecause of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient" to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Here, when taken as a whole, the evidence supports a finding of intentional intimidation. Although they are apparently neighbors, the complainant testified that her first encounter with defendant was the incident when she heard defendant's girlfriend calling for help, witnessed defendant beating her, and had to intervene to stop him from hurting her or the child. Subsequently, defendant approached the complainant twice, ostensibly pleasant when he first told her that she did not have to testify, but becoming more abrupt, and acting in a manner that could be reasonably interpreted as evidence of his building anger and hostility, when she balked at his assertions and requests. A finder of fact could reasonably find that defendant intended to intimidate her with his evident willingness to show her his temper. Likewise, when viewed in the light most favorable to the prosecution, the fact that defendant repeatedly approached the complainant – who knew of defendant's tendency toward violence – with the victims of that violence in tow could have been taken as a subtle reminder of defendant's intent to hold the complainant or Bailey accountable if the complainant did not accede to his wishes. We also find that defendant's statements to the complainant themselves supported the trial court's finding. Although defendant did not request that the complainant not testify, he did tell her that she could go to court and "[not] say anything."

In addition, we do not credit defendant's assertion that complainant was someone who was frightened of black men generally. Such an assertion is highly speculative and is not supported in any way by the trial testimony.

Under the circumstances, and considering that questions of credibility and intent are left to the factfinder and that intent need only be shown by minimal circumstantial evidence, we find that the prosecution presented sufficient evidence to support defendant's conviction.

(…continued)

with, prevent, or obstruct or attempt to willfully impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for a present or future official proceeding." However, he was not charged under this theory or this subsection. In addition, the trial court referred only to the use of threats or intimidation.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Jane M. Beckering